

January 12, 2001

THE QUESTION

Dear MEAC,

I am a certified county mediator and I am not licensed by any other professional organization. I would appreciate assistance on the correct application of rule 10.420(3), Conduct of Mediation, Rules for Certified and Court-Appointed Mediators.

Rule 10.420 requires that a mediator conduct an opening statement that includes (under subset 3) the following statement, "communications made during the process are confidential, except where disclosure is required by law." All of the mediations I facilitate are referred and conducted under the provisions of Chapter 44.

The confidentiality provision of Chapter 44 states in part, "Notwithstanding the provisions of s. 119.14, all oral or written communications in a mediation proceeding, other than an executed settlement agreement, shall be exempt from the requirements of chapter 119 and shall be confidential and inadmissible as evidence in any subsequent legal proceeding, unless all parties agree otherwise." As Chapter 44 is the governing law of my mediation practice and there are no confidentiality exceptions contained within Chapter 44, am I correct in stating that consequently, there are no "disclosures required by law" that I must communicate to the mediation participants? Or are there other laws (statutes) that restrict the confidentiality provision of Chapter 44?

Thank you in advance for your consideration. Your guidance in this area is appreciated.

Sincerely,

Certified County Mediator
Northern Division

AUTHORITY REFERENCED

Sections 39.201, 44.102, and 415.1034, Florida Statutes
Rules 10.420(a)(3) and 10.900(a), Florida Rules for Certified
and Court-Appointed Mediators

SUMMARY

The Committee is of the opinion that the question raised is legal rather than ethical and therefore is beyond the jurisdiction of the Committee.

OPINION

The question you raise is a legal question. Answering it would involve an interpretation of various Florida Statutes, such as section 44.102(3), the general mediation confidentiality provision; section 39.201, mandatory reports of child abuse; and section 415.1034, mandatory reporting of the abuse, neglect or exploitation of vulnerable adults. These statutes, if applied to their full extent, appear to create a conflict. This Committee does not have the jurisdiction to resolve conflicts between statutes. Rather, the function of the Committee, as outlined in rule 10.900(a), Florida Rules for Certified and Court-Appointed Mediators, is to respond to “ethical questions arising from the Standards of Professional Conduct.” These standards are a part of the court rules rather than statutes.

The Committee notes that rule 10.420(a)(3) merely requires you to inform mediation participants that mediation communications are confidential, except where disclosure is required by law. There is no requirement that you go into detail as to any specific statutory provisions.¹

January 12, 2001

Date

Charles M. Rieders, Chair

¹ The Committee notes that a Uniform Mediation Act is presently being developed by the National Conference of Commissioners on Uniform State Laws which, if adopted by the Florida Legislature, may resolve the current statutory conflicts.